

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Giant Resource Recovery-Attalla, Inc.
Attalla, Etowah County, Alabama
USEPA ID NUMBER ALD070513767**

Consent Order No. 21-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and Giant Resource Recovery – Attalla, Inc. (“Giant Resource Recovery”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (“AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Giant Resource Recovery – Attalla, Inc. (Giant Resource Recovery) operates a permitted commercial hazardous waste treatment and storage facility (the “Facility”) with EPA Identification Number ALD070513767, located at 1229 Valley Drive in Attalla, Etowah County, Alabama. Giant Resource Recovery, as a result of its operations at the Facility, was a permitted hazardous waste storage and treatment facility, a large quantity generator of hazardous waste, a used oil generator, a used oil fuel marketer, and a small quantity handler of universal waste as those terms are defined in ADEM Admin. Code Div. 14, at all times relevant to this action.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended.

In addition, the Department is authorized to administer and enforce the provisions of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On August 19, 2020, representatives of the U. S. Environmental Protection Agency – Region 4 and the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection ("CEI") of Giant Resource Recovery. The CEI and a review of Giant Resource Recovery's compliance showed the following:

- (a) Pursuant to Giant Resource Recovery's AHWMMMA Hazardous Facility Permit Part III.A., the Permittee may operate the units and processes described in Table III.1. of this permit, subject to the terms of this permit. Operation of any process or unit not listed in Table III.1. of this permit is prohibited.

Giant Resource Recovery managed hazardous waste in a unit other than those described in Table III.1 of its Hazardous Waste Facility Permit. Giant Resource Recovery placed one roll-off (A-187) containing hazardous waste, outside of the waste management units described in Table III.1 of the permit.

- (b) Pursuant to Giant Resource Recovery's AHWMMMA Hazardous Facility Permit Part III.C.3., the sampling and staging of incoming containers shall not exceed 72 hours. All containers that are to be fingerprinted or are awaiting analysis shall be segregated from other containers in the container storage area. Each container shall be marked with the date of receipt.

Giant Resource Recovery failed to mark approximately 113 hazardous waste containers with the date of receipt. These containers had been onsite for more than 72 hours.

- (c) Pursuant to Exhibit 5-1 General Inspection Schedule., container storage areas are required to be inspected for integrity, leaks, spills, and proper labeling.

Giant Resource Recovery failed to ensure proper labeling of the following hazardous waste containers:

- 107 containers of hazardous waste were not labeled with the words “Hazardous Waste”. 88 of these containers were located in the Container Storage Area and 19 were located in the Kruncher Warehouse.
 - 95 containers of hazardous waste were not labeled with an indication of the hazards of the contents. 93 of these containers were located in the Container Storage Area and 21 were located in the Kruncher Warehouse.
- (d) Pursuant to Giant Resource Recovery’s AHWMMMA Hazardous Facility Section 4.2.5.3 Management of Containers of the permit application, from the time they are received at the facility waste containers will be kept closed during storage, except when adding or removing waste or when sampling or processing.

Giant Resource Recovery failed to keep closed the following hazardous waste containers:

- Three containers located at the Receiving Dock & Solids Processing Area.
 - One 250-gallon tote located in Container Storage Area.
 - One cardboard box located in the Kruncher Warehouse.
- (e) Pursuant to Giant Resource Recovery’s AHWMMMA Hazardous Facility Permit Application Section 5.3.5.2 Tank System Inspections: Storage Tanks are fitted with a liquid level monitoring system. Level readings are observed daily and also before waste is added to or removed from a storage tank. Tank level readings are kept as part of the facility’s operations records. Tanks will be inspected daily for evidence of corrosion or deterioration; secondary containment will be inspected for cracks and evidence of spills. All tanks have been designed so that leakage from any part of the tank is readily observable.

Giant Resource Recovery failed to document rusting on the outside of Tanks 4 and 7 on the daily tank inspection records. Daily tank inspection documentation was missing for 4/17/2020

(f) Pursuant to Giant Resource Recovery's AHWMMMA Hazardous Facility Permit Part III.J. Condition of Containers: If a container holding hazardous waste is not in good condition (*e.g.*, severe rusting, apparent structural defects) or if it begins to leak, upon discovery the Permittee shall immediately transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in compliance with the conditions of ADEM Admin. Code R. 335-14-5-.09(2). The following hazardous waste containers holding hazardous wastes were not in good condition:

- Two 55-gallon drums located in Container Storage Area, Aisle B were bulging.
- One 250-gallon tote located in Container Storage Area, Corrosive Aisle had the top cut off and could not be closed.
- One cardboard box located in Container Storage Area, Incineration Aisle was in poor condition.
- One 55-gallon drum located in Container Storage Area, Dump Trailer Aisle was dented.
- One 55-gallon drum located in the Container Storage Area had waste on the outside of the container.

(g) Pursuant to Giant Resource Recovery's AHWMMMA Hazardous Facility Permit Application Section 4.2.5.3 Management of Containers: The waste containers are adequately separated to allow inspection, and adequate aisle space sufficient for forklift operation will be provided.

Giant Resource Recovery failed to provide adequate aisle spacing in multiple areas in the Container Storage Area.

(h) Pursuant to pertinent provisions of ADEM Admin. Code r. 335-14-9-.05, incorporating 40 CFR 268.50, the Facility may store hazardous waste restricted from land disposal under subpart C of Part 268, for up to one year.

Giant Resource Recovery stored two 55-gallon drums of hazardous waste, restricted from land disposal, located in the Kruncher Unit Warehouse, for more than one year. Each of the drums were marked with an accumulation start date of 8/9/2019.

- (i) Pursuant to Giant Resource Recovery's AHWMMMA Hazardous Facility Permit Application Section 5.3.2.2 Procedures to Prevent Hazards: Two entrance gates control access to the Facility. On a weekly basis, the gates and the fencing surrounding the facility are to be inspected for signs of damage. Proper operation of the gates and locks shall be assured. Required warning signs are to be inspected to make certain that they are in place and in good condition.

The inspectors noted multiple areas where the facility perimeter fence was damaged and did not have the required signage. Also, two of the main gates were not locked. The fence was reportedly damaged during a weather event in April 2020. A review of the weekly inspection records indicated no damage to the fencing or missing signs.

- (j) Pursuant to Giant Resource Recovery's AHWMMMA Hazardous Facility Permit Application Section 5.3.5.1 Procedures to Prevent Hazards: Containers received from offsite will be inspected daily for compliance with applicable Subpart I requirements. Such containers are to be stored within secondary containment. Inspection of the containment shall be conducted daily.

Based on the lack of adequate aisle spacing observed in the Container Storage Area, the Department that Giant Resource Recovery failed to perform daily inspections in this area.

5. On November 16, 2020, the Department issued a Notice of Violation to Giant Resource Recovery, which cited violations of the hazardous waste regulations and/or the Facility Permit that were discovered during the CEI.

6. On January 4, 2021, the Department received Giant Resource Recovery's response to the aforementioned Notice of Violation.

7. Pursuant to Ala. Code § 22-22A-5(18), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** In arriving at the civil penalty, the Department considered the general nature and magnitude of the violation(s) along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) **THE STANDARD OF CARE:** In considering the standard of care manifested by Giant Resource Recovery, the Department noted that the violations described above were non-technical and easily avoidable. The Department issued Consent Order 19-023-CHW on January 11, 2019 and Consent Order 20-002-CHW on October 7, 2019 to address similar violations regarding unpermitted storage of hazardous waste, failure to mark containers of hazardous waste with the date of receipt, and failure to mark containers of hazardous waste with the words "Hazardous Waste". Consequently, Giant Resource Recovery has repeatedly failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has determined that there was no significant economic benefit gained by Giant Resource Recovery as a result of the violations referenced herein.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects to mitigate as a result of the alleged violations.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Giant Resource Recovery has a history of previous violations and the penalty reflects that history.

(f) THE ABILITY TO PAY: Giant Resource Recovery has not alleged an inability to pay the civil penalty.

(g) OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty that is warranted in the spirit of cooperation and the desire to resolve this matter amicably without incurring the unwarranted expense of litigation (see Attachment A, which is made a part of the Department's Contentions).

8. The Department neither admits nor denies Giant Resource Recovery's contentions, which are set forth below. The Department has agreed to the terms of this Special Order by Consent in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interest of the citizens of Alabama.

FACILITY'S CONTENTIONS

9. Roll-off container A-187 contained solids which were non-free liquid hazardous waste generated by Giant Resource Recovery (GRR). At the time of the CEI, GRR personnel were performing the necessary pre-transportation functions for this site-generated waste to be transported for disposal. The waste was not being "stored" as contemplated in GRR's TSD permit and thus GRR did not store hazardous waste in an unpermitted area as a TSD.

10. GRR immediately corrected all labeling issues identified in the CEI. The majority of the labeling issues identified during the CEI were attributable to a single pallet that contained 88

boxes where shrink wrap had previously been removed. Nonetheless, GRR conducted training with facility personnel to reemphasize the importance of proper labeling and identifying containers.

11. GRR asserts it was subject to the regulations for satellite accumulation and that it was not storing containers for longer than a year.

12. GRR asserts it was in full compliance with its facility permit and the requirements set forth in the regulations for completing daily hazardous waste inspections.

13. Giant Resource Recovery neither admits nor denies the Department's contentions. Giant Resource Recovery agrees to the entry of this Special Order by Consent in the interest of resolving this matter without delay and expense of litigation. Giant Resource Recovery consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, Giant Resource Recovery, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c. , as amended, as well as the need for timely and effective enforcement and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Giant Resource Recovery agree to enter into this Special Order by Consent with the following terms and conditions:

A. Giant Resource Recovery agrees to pay to the Department a civil penalty in the amount of \$49,000 in settlement of the violations alleged herein within forty-five days of the effective date of this Special Order by Consent. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Giant Resource Recovery agrees that all penalties due pursuant to this Special Order by Consent shall be made payable to the Alabama Department of Environmental

Management by certified or cashier's check or other payment methods acceptable to the Department and shall be remitted to:

Office of General Counsel

Alabama Department of Environmental Management

P.O. Box 301463

Montgomery, Alabama 36130-1463

Any payment submitted to the Department pursuant to this Special Order by Consent shall reference Giant Resource Recovery's name and address, and the ADEM Administrative Order number of this action.

C. That, within 30 days of receipt of this Order, Giant Resource Recovery shall develop and submit to the Department, a plan detailing specific changes to its operating procedures to avoid storage of hazardous waste in unpermitted areas, and to ensure proper monitoring and documentation of all areas requiring routine inspection. The plan may include proposed changes or modifications to the Permit.

D. Giant Resource Recovery agrees that, independent of this Special Order by Consent, Giant Resource Recovery shall comply with all terms, conditions, and limitations of its Permit and the applicable parts of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

E. The Department and Giant Resource Recovery ("parties") agree that this Special Order by Consent shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Special Order by Consent certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Special Order by Consent, to execute the Special Order by Consent on behalf of the party represented, and to legally bind such party.

F. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

G. Giant Resource Recovery agrees that it is not relieved from any liability if it fails to comply with any provision of this Special Order by Consent.

H. For purposes of this Special Order by Consent only, Giant Resource Recovery agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County.

I. The parties agree that the sole purpose of this Special Order by Consent is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Special Order by Consent, then such future violations may be addressed in orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Giant Resource Recovery agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement action address new matters not raised in this Special Order by Consent.

J. The parties agree that this Special Order by Consent shall be considered final and effective immediately upon signature of all parties. This Special Order by Consent shall not be appealable, and Giant Resource Recovery does hereby waive any hearing on the terms and conditions of this Special Order by Consent.

K. The parties agree that this Special Order by Consent shall not affect Giant Resource Recovery's obligation to comply with any federal, State, or local laws or regulations.

L. The parties agree that final approval and entry into this Special Order by Consent are subject to the requirements that the Department give notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the order.

M. The parties agree that, should any provision of this Special Order by Consent be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.


N. The parties agree that any modifications of this Special Order by Consent must be agreed to in writing signed by both parties.

O. The parties agree that, except as otherwise set forth herein, this Special Order by Consent is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State, or local law, and shall not be construed to waive or relieve Giant Resource Recovery of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

GIANT RESOURCE RECOVERY-ATTALLA, INC.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

STEPHEN P. HOLT

(Printed Name)

VICE PRESIDENT, EHS

(Printed Title)

05/06/2021

(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A
Giant Resource Recovery – Attalla, Inc.
Attalla, Etowah County
Facility ID No. ALD070513767

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Storage of hazardous waste in an unpermitted area.	1	\$10,000	\$7,500	\$7,500	
Failure to mark containers of hazardous waste with the date of receipt.	1	\$3,000	\$500	\$500	
Failure to properly label containers holding hazardous waste.	1	\$3,000	\$500	\$500	
Failure to keep closed hazardous waste storage containers.	1	\$500	\$250	\$0	
Failure to conduct accurate or document daily hazardous waste tank inspections.	1	\$2,500	\$1,000	\$0	
Failure to ensure that all hazardous waste containers are in good condition.	1	\$2,500	\$500	\$0	
Failure to provide adequate aisle space in areas where hazardous waste is stored.	1	\$2,500	\$1,000	\$0	
Storage of hazardous waste for greater than one year.	1	\$10,000	\$1,000	\$0	
Failure to inspect or document damage to perimeter fencing/failure to adequately restrict access to the Facility.	1	\$2,500	\$1,000	\$0	
Failure to perform daily inspections in the container storage area.	1	\$2,500	\$500	\$0	Total of Three Factors
TOTAL PER FACTOR		\$39,000	\$13,750	\$8,500	\$61,250

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	\$0
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$61,250
Other Factors (+/-)	(\$12,250)	Total Adjustments (+/-)	(\$12,250)
Total Adjustments (+/-) Enter at Right	(\$12,250)	FINAL PENALTY	\$49,000

Footnotes

* See the "DEPARTMENT'S CONTENTIONS" portion of the Order for a detailed description of each violation and the penalty factors.